

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER) CASE NO. IPC-E-22-28
COMPANY’S APPLICATION FOR)
APPROVAL OR REJECTION OF AN)
ENERGY SALES AGREEMENT WITH) ORDER NO. 35705
LOWER LOWLINE LLC, FOR THE SALE)
AND PURCHASE OF ELECTRIC ENERGY)
FROM THE LOWLINE #2 HYDRO)
PROJECT)

On November 9, 2022, Idaho Power Company (“Company”) applied for approval of an energy sales agreement (“ESA”) with Lower Lowline LLC (“Seller”) (collectively the “Parties”) for energy generated by the Lowline #2 Hydro Project (“Facility”). The Facility is a qualifying facility (“QF”) under the Public Utility Regulatory Policies Act of 1978 (“PURPA”).

On December 12, 2022, the Commission issued a Notice of Application and Modified Procedure setting public comment and Company reply deadlines. Commission Staff (“Staff”) filed comments and the Company filed reply comments. No other comments were received.

Having reviewed the record in this case, the Commission now issues this final Order conditionally approving the Company’s Application as discussed below.

BACKGROUND

Under PURPA, electric utilities must purchase electric energy from QFs at purchase or “avoided cost” rates approved by the Commission. 16 U.S.C. § 824a-3; *Idaho Power Co. v. Idaho PUC*, 155 Idaho 780, 789, 316 P.3d 1278, 1287 (2013). The Commission has established two methods for calculating avoided costs, depending on the size of the QF project: (1) the surrogate avoided resource method, used to establish “published” avoided cost rates; and (2) the integrated resource plan method, to calculate avoided cost rates for projects exceeding published rate limits. *See* Order No. 32697 at 7-22.

The Facility is located near Twin Falls, Idaho and has a 2,790 kilowatt (“kW”) nameplate capacity.¹ The Seller has been delivering energy from the Facility to the Company under an energy sales agreement entered into on September 12, 1986. The Company requested an effective date of May 1, 2023; the 1986 energy sales agreement expires on April 30, 2023.

¹ The nameplate capacity remained unchanged from the 1986 energy sales agreement.

THE APPLICATION

The ESA has a 20-year term with non-levelized, seasonal hydro² published avoided cost rates as set in Order Nos. 35422 and 35475. The Seller would receive capacity payments for the duration of the ESA.

The ESA requires the Seller to estimate net energy and also adopts a “five-day advanced notice for adjusting Estimated Net Energy Amounts for purposes of complying with 90/110 firmness requirements.” Application at 8.

The Company requested the Commission approve the ESA and declare “all payments for the purchase of energy under the ESA . . . be allowed as prudently incurred expenses for ratemaking purposes.” *Id.* at 10.

STAFF COMMENTS

Staff’s comments include relevant analyses for capacity payments, the 90/110 Rule, avoided cost rates, and suggested a modification of Article XXIII of the ESA. Of note, the rates from the original 1986 agreement did not contain capacity payments. Staff recommends the QF be granted “immediate capacity payments for its entire generation capacity amount over the full term of the ESA” in accordance with Order No. 32697. Staff Comments at 2. Citing Order No. 35506, Staff recommends the Parties should provide more detail in Article XXIII of the ESA (concerning the Company and the Seller’s process for future potential modifications of the Facility and seeking approval from the Commission). Conditionally, Staff recommends that the Commission approve the proposed ESA and declare all payments as prudently incurred for ratemaking purposes if the parties update Article XXIII.

COMPANY REPLY

The Company states that it did not think that amending Article XXIII was necessary. Nonetheless, the Company was willing amend Article XXIII according to Staff’s recommendations and provided an amended version of Article XXIII accordingly. The Company attached proposed amendments to Article XXIII and reiterated the Company’s desire to accommodate Staff’s request despite feeling that the recommendation was unnecessary.

² The Facility generates at least 55% of its annual generation in June, July, and August which qualifies it for seasonal hydro rates.

COMMISSION FINDINGS AND DISCUSSION

The Commission has jurisdiction over this matter under *Idaho Code* §§ 61-502 and 61-503. The Commission is empowered to investigate rates, charges, rules, regulations, practices, and contracts of public utilities and to determine whether they are just, reasonable, preferential, discriminatory, or in violation of any provision of law, and to fix the same by order. *Idaho Code* §§ 61-502 and 61-503. In addition, the Commission has authority under PURPA and Federal Energy Regulatory Commission (“FERC”) regulations to set avoided costs, to order electric utilities to enter fixed term obligations for the purchase of energy from QFs, and to implement FERC rules. The Commission may enter any final order consistent with its authority under Title 61 and PURPA.

The Commission has reviewed the record, including the Company’s Application, Staff’s comments, and the Company’s reply comments. With respect to Article XXIII of the proposed modified ESA, we remain persuaded by Staff’s Comments that this Article should be changed. The intent of this modification is to address when the Seller seeks to modify the Facility that may require a change in rates.

The Company’s original ESA, and proposed modified ESA, does not require Commission approval prior to modifying the Facility. Although we appreciate the Company’s efforts to propose modifications to Article XXIII these modifications to the ESA do not address the Commission’s concerns, which are: (1) that the QF is paid the proper and authorized rate as of the first operation date after Facility modification, and (2) that the description of the Facility reflected in the final amendment describe the Facility as actually modified.

To ensure these two concerns are addressed, the Commission directs the Parties to amend the language in the ESA to address Facility modification that could occur during the term of the contract. At a minimum the Parties should include language that reflects the foregoing as we stated in Order No. 35506:

1. Language that restricts the Seller from modifying the Facility from the as built description of the Facility included in Exhibit B, without promptly notifying the Company of that intent.

2. Language that requires the Seller to provide notification of planned modifications (such as fuel change or capacity size change) to the as-built description.

Order No. 35506 at 4.

This language would ensure that the QF is required to provide prior notification to the Company of its intent to modify its facility. However, additional language is needed to ensure both parties agree to: (1) amend the contract reflecting the facility as actually modified, and (2) adjust payments to the QF such that the final amounts reflect the proper authorized rates of the facility as actually modified and as of the date when energy is first delivered as a modified facility.

Additionally, to ensure customers will not be overcharged for energy delivered from the Facility, the Commission directs the Company to only include net power supply expense in the Company's Power Cost Adjustment that reflects the proper authorized rate for all energy delivered as of the first operation date as a modified Facility.

The Commission finds it reasonable to approve the proposed ESA once amended as discussed above. The Company's payments for energy and capacity will be deemed prudently incurred expenses for ratemaking purposes after the ESA has been amended.

ORDER

IT IS HEREBY ORDERED that the Company's proposed ESA shall be approved effective May 1, 2023, provided the Parties amend the ESA as described above.


IT IS FURTHER ORDERED that only net power supply expense in the Company's Power Cost Adjustment reflect the proper authorized rate for all energy delivered as of the first operation date of the Facility, if modified, under Article XXIII of the ESA.

IT IS FURTHER ORDERED that the parties are directed to provide the Commission with an amended ESA as a compliance filing within 15 days of this Order.

IT IS FURTHER ORDERED that all payments made by the Company for purchases of energy and capacity under the amended ESA shall be allowed as prudently incurred expenses for ratemaking purposes.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order regarding any matter decided in this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 13th day of March 2023.



ERIC ANDERSON, PRESIDENT

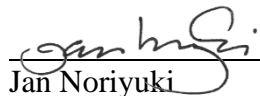


JOHN R. HAMMOND, JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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